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TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In Support of

SB 1232 (RAISED) AN ACT CONCERNING MUNICIPAL IMMUNITY FOR THE NEGLIGENT ACTS OR OMISSIONS OF EMPLOYEES, OFFICERS AND AGENTS.

April 4, 2011

My name is John Logan and I have been a practicing attorney since 1982. My offices are located in Torrington, Connecticut and a large portion of my practice involves the representation of persons who are injured victims of negligence.

C.G.S. §52-557n affirmatively abrogated municipal governmental immunity and permitted injured persons the right to bring a direct cause of action against a municipality when those injuries result from the negligent acts or omissions of municipal employees. An exception to liability exists for those "negligent acts or omissions which require the exercise of judgment or discretion *as an official function of the authority expressly or impliedly granted by law.*" "The policy behind the [discretionary] exception is to avoid allowing tort actions to be used as a monkey wrench in the machinery of government decision making." *Gauvin v. City of New Haven*, 187 Conn. 180 (1982).

Presently, Connecticut law construes virtually every municipal act as "discretionary" and immune from suit. Only when there exists a "city charter provision, ordinance, regulation, rule, policy, or other directive" specifying the exact manner in which an act is to be performed is an action considered "ministerial" as opposed to "discretionary."

This construction has spawned some absurd results. For instance, when a student was injured after a teacher negligently opened a door into her while she was in the school hallway, our state

In *Violano*, https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2010437364&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search) the court did note the disfavor surrounding the current construction, but felt its hands were tied as to the topic:

> [T]he distinction between ministerial and discretionary duties is not without its flaws. One commentator has stated that 'the difference between 'discretionary' and 'ministerial' is artificial." 18 E. McQuillin, Municipal Corporations (3d Ed. Rev. 2003) § 53.04.10, p. 183. Indeed, it has been observed that, "It would be difficult to conceive of any official act, no matter how directly ministerial, that did not admit of some discretion in the manner of its performance, even if it involved only the driving of a nail." *Ham v. Los Angeles*, 46 Cal. App. 148, 162, 189 P. 462 (1920). Due to dissatisfaction with the distinction between the two types of acts, a number of jurisdictions have abandoned it in favor of the type of distinction between the planning and operational level favored by the plaintiffs in the present case. See 18 E. McQuillin, supra, at § 53.04.20, and cases cited therein.
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> Despite this criticism of the distinction between ministerial and discretionary acts, our legislature nevertheless has adopted this common-law distinction as the basis for determining the limits to municipalities' governmental immunity. As we have noted previously herein, § 52-557n (a)(2)(B) has immunized political subdivisions from liability "for damages to person or property caused by ... negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." Because the legislature has codified this distinction, we are bound by it. .... Irrespective of the merits of the competing approach advocated by the plaintiff, "[w]e must resist the temptation which this case affords to enhance our own constitutional authority by trespassing upon an area clearly reserved as the prerogative of a coordinate branch of government."

Thanks you for your consideration of this proposal.